

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

ARMIS ARRENDONDO,

*Petitioner,*

vs.

D. W. NEVEN, *et al.*

*Respondents.*

2:06-cv-01369-PMP-GWF

ORDER

This habeas matter under 28 U.S.C. § 2254 comes before the Court for consideration of possible issuance of a certificate of appealability (COA) following upon the Petitioner's filing of a notice of appeal (#6).

Petitioner seeks to appeal this Court's order (#5) denying his motion (#4) for leave of court to file an extended petition. The motion was filed over six months after entry of a final judgment dismissing the action without prejudice. The action was dismissed without prejudice because a habeas petition was not submitted with the pauper application and further because the pauper application was incomplete. The dismissal was without prejudice to the filing of a new action with a petition and a properly completed pauper application. No appeal was taken from the judgment.

Generally, when the district court denies a habeas petition on procedural grounds without reaching the underlying constitutional claims, the petitioner must show, in order to

1 obtain a COA: (1) that jurists of reason would find it debatable whether the petition stated a  
2 valid claim of a denial of a constitutional right; and (2) that jurists of reason would find it  
3 debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*,  
4 529 U.S. 473, 484, 120 S.Ct. 1595, 1604, 146 L.Ed.2d 542 (2000). While both showings  
5 must be made to obtain a COA, “a court may find that it can dispose of the application in a  
6 fair and prompt manner if it proceeds first to resolve the issue whose answer is more apparent  
7 from the record and arguments.” 529 U.S. at 485, 120 S.Ct. at 1604. Where a plain  
8 procedural bar is properly invoked, an appeal is not warranted. 529 U.S. at 484, 120 S.Ct.  
9 at 1604.

10 The Court will assume, *arguendo*, that the foregoing standard is applicable in the  
11 present procedural context.

12 Reasonable jurists would not find it debatable whether the district court was correct in  
13 its procedural ruling denying Petitioner’s motion to file an extended petition in a closed action.  
14 Petitioner may file a new action with a habeas petition and a properly completed pauper  
15 application, but he may not simply file a petition and a pauper application in this closed action  
16 six months after entry of a final judgment dismissing the action.

17 Petitioner is informed that, under 28 U.S.C. § 2244(d), a one-year limitation period  
18 applies to federal habeas petitions under 28 U.S.C. § 2254 challenging state custody. The  
19 Nevada Supreme Court order on direct appeal that Petitioner attached with #4 is file-stamped  
20 June 29, 2006. Accordingly, based upon what Petitioner has filed, and after allowing for the  
21 expiration of the ninety day time period to seek *certiorari* in the United States Supreme Court,  
22 it is possible that the federal one-year limitation period may expire as early as September 27,  
23 2007. The federal one-year limitation period continues to run for a later federal petition even  
24 while the present federal appellate proceedings are pending. *See Duncan v. Walker*, 533  
25 U.S. 167, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001). Thus, if Petitioner does not file a new  
26 federal habeas petition in a new action before September 27, 2007, any later federal habeas  
27 petition potentially may be time-barred.

28 The present action, however, is and has been closed.

1 IT THEREFORE IS ORDERED that a certificate of appealability is DENIED.

2 IT FURTHER IS ORDERED that the Clerk of the Court shall forward this order to the  
3 Court of Appeals in a supplemental transmittal.

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5 DATED: August 3, 2007.

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8 PHILIP M. PRO  
United States District Judge  
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